

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

James C. Harrison
Remcho, Johansen & Purcell
Dated: December 21, 2004
File Number A-04-217

The public official asked if she may donate campaign funds to a nonprofit organization earmarked to be used to hire a consultant and other costs. The official would later be hired by the organization and receive a salary from that organization after the donation has been expended. The letter explained that the donation would be

prohibited if her donated campaign funds are used to pay for her salary, or the donation makes other funds available to pay for her salary.

Thomas S. Bunn III
Newhall County Water District
Dated: December 10, 2004
File Number I-04-231

A local water district is advised that the Act does not prevent adoption of local campaign contribution and expenditure limits, provided such limits do not conflict with the provisions of the Act. So long as there is compliance with section 81013, the validity of such local ordinances, do not fall under the purview of the Act.

Prosper Acquah
California Assembly
Dated: December 21, 2004
File Number A-04-249

A state candidate's campaign committee established for a 2004 election may not deposit checks made out to that committee into the candidate's 2006 reelection committee's campaign bank account. If the 2004 committee has net debt, it may accept the contributions, or the 2004 committee may return the contributions.

Linda A. Troyan
City of Santee
Dated: December 6, 2004
File Number A-04-251

The City of Santee held a special election on February 15, 2005. Candidates and committees are authorized to combine the semi-annual and first pre-election campaign statements.

Donna J. Rogers
City of Palo Alto
Dated: December 28, 2004
File Number I-04-255

The City of Palo Alto is advised that its mail-out ballot and protest procedure being carried out as required by Art. XIII D, Section 4 of the California Constitution related to a storm drainage fee increase is not a "measure" nor an "election" within the meaning of the Act.

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Dennis Zell**California Assembly****Dated: November 17, 2004****File Number A-04-176**

Reconsideration of prior advice (*Zell* Advice Letter, No. A-04-142). The initial letter declined to conclude that auction bids by candidates for advertising space on a billboard established the billboard's fair market value. On reconsideration, the same conclusion is reached. The Commission cannot assume a fair market value based on prices offered by a restricted class of buyers based on a court injunction.

James V. Lacy**"No New Taxes"****Dated: October 21, 2004****File Number A-04-195**

Advises a ballot measure committee on the application of the advertising disclosure statutes in an upcoming ballot measure campaign.

C. April Boling**San Diego County Republican Central Committee****Dated: October 22, 2004****File Number A-04-212**

Provides a discussion on how to report expenditures made by a central committee's federal account when the expenditures support both state and federal candidates.

Venessa Spilios**Brown for Attorney General****Dated: October 21, 2004****File Number A-04-214**

Advises a candidate for state elective office that the investment of campaign funds in auction rate securities is not permitted under regulation 18524.

Sue Olvera**Contra Costa County****Dated: October 29, 2004****File Number A-04-229**

Advises the County of Contra Costa that the semi-annual campaign statement covering through December 31, 2004, may be combined

with the first pre-election statement due in connection with a February 15, 2005, formation district election.

Conflict of Interest

Kathryn E. Donovan**California Air Resources Board****Dated: December 23, 2004****File Number I-04-193**

A state board appointee is advised that the "public generally" exception for certain specialized appointments to boards and commissions in regulation 18707.4 does not apply to the seat to which she was appointed.

Heather C. McLaughlin**City of Benicia****Dated: December 6, 2004****File Number A-04-194**

Two members of a city council are advised on whether they have conflicts of interest in council decisions regarding a public use easement on a parcel of private property. One council-member owns property within 500 feet of the easement and has a conflict of interest, the other owns property beyond 500 feet and does not have a conflict of interest.

Heather C. McLaughlin**City of Benicia****Dated: December 6, 2004****File Number A-04-235**

A mayor is precluded from participating in council decisions regarding an empty city lot because the mayor owns a business less than 500 feet from the lot.

Scott H. Howard**City of Glendale****Dated: December 20, 2004****File Number I-04-199**

A city attorney asks for general advice regarding possible conflicts of interest for design review board members who are sources of income to each other. In addition, the letter offers general advice explaining how subcontractors can be disqualifying sources of income.

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Terri Milton
Palm Springs Desert Resorts Convention and Visitor's Authority

Dated: December 28, 2004

File Number I-04-201

A local official is advised that the Act does not bar a public official from maintaining outside employment during their tenure as a public official, but that the compensation received for co-authoring a book is subject to the reporting and disqualification provisions of the Act. However, the honorarium ban does not apply to his compensation for co-authoring the book.

Stephen A. Kronick
Amador Water Agency
Dated: December 6, 2004
File Number A-04-220

A public official has been advised that he does not have an economic interest in a family trust because the criteria of regulation 18234(c) are not met. Therefore, the official may participate in a decision involving the possible location of a water pipeline and storage tank on property held by the family trust.

Bill Schneiderman
Mi-Wuk/Sugar Pine Fire Protection District
Dated: December 6, 2004
File Number I-04-228

The members of the district's board may vote on procurement policies, unless board members have economic interests in businesses that may be affected by the decision. In addition, the Act does not bar volunteer firefighters from posting business cards and announcements on the firehouse bulletin board.

Morgan L. Foley
City of Coronado
Dated: December 8, 2004
File Number A-04-232

A council member is advised that absent evidence rebutting the presumption that any effects on a council member's real property will not be material, it is *not* reasonably foreseeable that decisions on removal of traffic diverters will have a material financial effect on the public official's real property.

Celia Brewer
City of Solana Beach
Dated: December 14, 2004
File Number A-04-233

A council member requests additional advice regarding whether the "public generally" exception applies to him regarding a sand replenishment decision which may affect the value of his home. The information provided by the public official regarding residences in the jurisdiction did not meet the requirements of the first prong of the "public generally" exception, which requires a significant segment of property owners or homeowners.

Ralph Hicks
Port of San Diego
Dated: December 16, 2004
File Number I-04-237

An employee for a local government agency is advised that nothing in the Act prohibits him from pursuing outside employment, including acting as a sales representative for, and receiving commission income from, a privately-owned company. His ability, however, to make, participate in making, or influence governmental decisions will depend on applying the appropriate materiality standards and verifying that there will be no reasonably foreseeable material financial effect on any persons who are a source of income to him. Because, in some cases, when a governmental decision affects a public entity, the effect of the decision flows to all residents in the jurisdiction, the "public generally" exception may apply to conflicts of interest arising by virtue of his possible income from governmental entities.

David Davis
City of Santa Barbara
Dated: December 6, 2004
File Number A-04-242

The public official is advised that an unpaid position on the board of a 501(c)(3) organization is not a financial interest in the 501(c)(3) organization under the Act and will therefore not result in his disqualification from decisions regarding the 501(c)(3).

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Catherine L. DiCamillo
City of South Lake Tahoe
Dated: December 31, 2004

File Number A-04-256

The council member has been advised that though her spouse is a lieutenant with the county sheriff's department, the council member may participate in decisions concerning department's wages, salaries and benefits, so long as the decisions affect all employees in the same job classification as her spouse in the same manner. The council member may not make or participate in decisions concerning the hiring, firing, demotion, or suspension of her husband, or decisions that would set a salary for her husband that is different from salaries paid to other employees in the same job classification or position.

Michelle Le
San Juan County Environmental Health Department
Dated: December 28, 2004

File Number I-04-259

The public official is advised that the Act does not prohibit public officials from maintaining outside employment, however, income received from the employment may be subject to the Act's reporting and disqualification provisions.

Mark H. Cibula
Shasta County District Attorney's Office
Dated: December 31, 2004
File Number I-04-260

The letter advises the requestor that he may be required to recuse himself from making or participating in the making of a governmental decision affecting the district attorney's office while sitting on the county board of supervisors, depending upon the facts surrounding the decision.

Jean Cihigoyenetché
City of Fontana
Dated: December 31, 2004
File Number I-04-261

The requestor, counsel for a local agency, is advised regarding an employee of the agency

who was running for city office, that holding multiple governmental positions simultaneously does not inherently create a conflict of interest under the Act. Salary and reimbursement of expenses or per diem received from a state, local or federal government agency are expressly exempted from the definition of "income" for purposes of the Act. Consequently, unless the employee's personal finances are otherwise affected by a governmental decision, his salary received as a public official (in either capacity) is not a disqualifying economic interest.

H. Peter Klein
Mendocino County
Dated: November 10, 2004
File Number A-04-180

A planning commissioner does not have a disqualifying conflict of interest in decisions regarding a county-wide grading ordinance merely because the ordinance might increase or decrease the cost of a driveway on a parcel of unimproved real property the planning commissioner owns, should she decide to build a house on it in the future.

Steve Messina
City of Benicia
Dated: November 30, 2004
File Number A-04-200

Advises a city council member on the application of conflict-of-interest rules to future governmental decisions that involve other clients of council member's attorney.

Richard G. Barakat
City of Bradbury
Dated: November 19, 2004
File Number I-04-209

A city council member was advised he has a conflict of interest under the Act if he participates in a decision to annex property within 500 feet of his home unless he can show that (1) there will be no material financial effect on his property, or (2) the "public generally" exception applies. The council member was also advised that he was not prohibiting from communicating with his constituents.

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Larry Myers
Native American Heritage Commission
Dated: November 18, 2004
File Number I-04-213

General advice is provided to the executive section of a state agency regarding the conflict-of-interest analysis applicable to public officials who accept private-sector employment while continuing to serve as public officials.

Michael D. Milich
City of Modesto
Dated: November 23, 2004
File Number I-04-216

A city employee was lead employee on several traffic projects. The projects were reclassified as traffic mitigation measures under CEQA for a new Kaiser Hospital development. The city employee's wife is an employee at Kaiser Hospital. However, the employee may participate in roadway decisions so long as the projects are separable from the Kaiser Project.

Cynthia A. Sterling
Fresno City Council
Dated: November 9, 2004
File Number A-04-227

A member of the city council has a conflict of interest because of an economic interest in an irrevocable future trust in which they have a beneficial interest of 10% or greater. A conflict of interest arose when she was asked to make decisions regarding the revitalization of real property located in the trust.

Peter M. Thorson
City of Temecula
Dated: November 23, 2004
File Number A-04-238

Where three council members (of five) have conflicts of interest, legally required participation may be invoked in order to requalify one of the three disqualified members to participate in the proceeding for the duration of the proceeding. If the selected member leaves the council and the seat *cannot* be filled, the legally required participation rule may be in-

voked to requalify one of the two remaining members, until the proceeding is completed or until a new member is appointed or elected.

Cynthia Hernandez
City of Indio
Dated: November 17, 2004
File Number I-04-240

A deputy city clerk who has been elected as city clerk but has not assumed office seeks advice as to whether there is a conflict of interest under the Act in holding both offices simultaneously. She was advised that this is not a PRA issue and she was urged to contact local city attorney or Attorney General with respect to the doctrine of incompatible offices.

Derek Johnson
Isla Vista Recreation and Parks District
Dated: November 17, 2004
File Number I-04-244

Advice regarding conflicts of interest that result from the public official holding two public positions. He is advised that a public official should request advice from the Attorney General's office since his question pertains to incompatible activities and Government Code Section 1090.

Heather C. McLaughlin
City of Benicia
Dated: November 19, 2004
File Number A-04-225

A city mayor is advised that he does not have a conflict-of-interest under the Act in making appointments to the city's design review commission and planning commission when one or both commissions will consider approval of a development project on property that he owns, as long as he has no financial interest in the appointees and there has been no decision as to how the appointee will vote. The mayor however, cannot influence the decisions.

Kathleen Faubion
City of Milipitas
Dated: October 13, 2004
File Number A-04-163

Advises a planning commissioner, who is also a real estate agent, on the impact of the con-

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flict-of-interest rules on her participation in the commission's consideration of and recommendations regarding a local housing development project.

Janet Bibby
County of Mariposa
Dated: October 6, 2004
File Number A-04-188

The public official may participate and vote in union discussions regarding the increase of the salaries and benefits of all employees in the same job classification as her husband. Although the official will be permitted to participate in collective bargaining agreements involving adoption of general personnel policies, a decision to hire, fire, promote, demote, or discipline the official's husband, or to set a salary for her husband which is different from salaries paid to other employees of the agency in the same job classification or position would require the official's disqualification from participation in the negotiations with the union. The official also received advice regarding property she owns located within the boundaries of a general plan amendment. She will not be permitted to make, participate in making or influence any decision regarding amendments to the general plan, unless the presumption of materiality can be rebutted.

Charles T. Kilian
City of Cupertino
Dated: October 20, 2004
File Number I-04-189

A member of the city council may have a conflict-of-interest as executive director of the local chamber of commerce if there is a reasonably foreseeable material financial effect on the chamber resulting from a decision concerning a member of the chamber.

Sonia R. Carvalho
City of Yorba Linda
Dated: October 14, 2004
File Number A-04-197

A member of transportation corridor agency may participate in decisions involving the proposed southern extension of a public toll road

system so long as the decision does not have a material and foreseeable financial effect on his employer. The fact that the decision may impact a client of his employer's is not determinative because while he has an ownership interest in the firm, his interest is less than 10 percent of the firm.

Brent Meyer
Department of Transportation
Dated: October 21, 2004
File Number I-04-202

An employee of governmental agency is precluded from influencing governmental decisions within his or her own agency. Influencing includes contact on behalf of the employee's private employer.

Glenn Mondo
Nexus and Geneva Commons Projects
Dated: October 6, 2004
File Number A-04-205

Because the public official's residence is located more than 500 feet from proposed boundaries of two projects, there is a presumption of no materiality. As long as the presumption is not rebutted, neither of two decisions will result in disqualification.

Statement of Economic Interests

Kathryn E. Donovan
California Commission for Jobs and Economic Growth
Dated: December 28, 2004
File Number A-04-190

A requestor is advised that based on the *Siegel* test it does not appear that the California Commission for Jobs and Economic Growth is a governmental agency at this time. Therefore, this organization is not required to adopt a conflict of interest code.

Philip D. Kohn
City of Laguna Beach
Dated: December 22, 2004
File Number A-04-258

A council member is not required to report salary income earned and received by her spouse prior

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to their marriage on her statement of economic interests, nor will it give rise to a conflict of interest for her. The council member must report on her statement of economic interests her community property interest (50%) in income received by her spouse after their marriage, and this economic interest could give rise to a conflict of interest.

Jay Cohan

City of Los Altos

Dated: November 24, 2004

File Number A-04-241

Advises that unless an investment meets an exemption from reporting under the Act, the filer must report investments of \$2,000 or more in business entities located in or doing business in the City of Los Altos. The requestor is also advised that gifts are reportable, unless they are from sources exempted by the Act. Finally, this letter advises that the requestor's agency may amend its conflict of interest code to remove his position.

Mass Mailing

Bruce Colbert

Desert Hot Springs

Dated: November 17, 2004

File Number A-04-164

A mailing that addresses concerns regarding a proceeding before a local regulatory body, is not a "mass mailing" prohibited by the Act when all costs of production and distribution are paid by a nonprofit body. The Act does not prohibit a mayor from writing a letter and providing a newspaper column for inclusion in this mailing.

Linda Hill

San Bernardino City Unified School

District

Dated: November 4, 2004

File Number A-04-218

A school district was advised that yearbooks sold to its students containing photographs of the elected school board members would be an unsolicited request for information and would

not be a prohibited mass mailing under the Act, provided the students were not requested or induced by the board to purchase the yearbooks.

Gift Limits

Jon Waldie

State Assembly

Dated: December 31, 2004

File Number I-04-257

The California Assembly is advised that free airport parking and shuttle services are not gifts if the requirements of regulation 18944.2 are met.

Thomas D. Glasser

San Bernardino County

Dated: December 28, 2004

File Number I-04-264

A filer is not required to disclose real property or money, both given to him by his father, as either gifts or income on his Statement of Economic Interests. However, the property would be disclosed on Schedule B – Interests Real Property if it is located in California.

Gregory P. Priamos

City of Riverside

Dated: November 9, 2004

File Number A-04-191

Dated: November 24, 2004

File Number A-04-247

The president and CEO of a nonprofit 501(c)(3) organization has recently been elected to the city council. The officer is in charge of fundraising for the nonprofit but his salary is one paid out of public funds. The officer asks whether the donations are considered reportable gifts and whether he must disclose donations to the nonprofit which are over \$5,000 and made at his behest. Under the Act, donations received by a nonprofit are not considered gifts to the public official. In addition, under the limited facts set forth in the letter, the city council member does not have reporting requirements because the donations are made for purposes unrelated to the officer's office candidacy. Also see the follow up letter further clarifying the conclusion in A-04-191.

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Steven T. Mattas
City of South San Francisco
Dated: November 22, 2004
File Number A-04-207

Provided a discount on a condominium is made in the regular course of business by the company offering it the discount would not be considered a "gift" to a council member because it is made available to members of the public without regard to official status.

Randall W. Keen
California Protocol Foundation
Dated: October 22, 2004
File Number A-04-219

Gifts of travel are not subject to gift limits if the travel is provided by a 501(c)(3) organization and the travel is reasonably related to an issue of state, national, or international public policy. Generally, a person is considered the source of a gift if the person makes the gift to an official and is not acting as an intermediary. Where a third party makes a payment to a person and the third party *directs and controls* the use of the payment to make a gift to a clearly identified official, the third party is the source of the gift. The letter also discusses gifts to a public agency.

Personal Use

Ash Pirayou
Committee to Protect Neighborhood Libraries
Dated: October 22, 2004
File Number A-04-221

A local ballot measure committee asks if it may contribute a portion or all of its current cash on hand to another local ballot measure committee with similar goals without violating the "personal use" restrictions of the Act. The transfer of funds is allowable if the transfer does not have a substantial personal benefit on any person who directs or controls activities of the contributing committee.

Revolving Door

David Rist
Department of Toxic Substances Control
Dated: October 8, 2004
File Number A-04-187

A scientist with the Department of Toxic Substances Control is advised on the application of post-government employment restrictions as he contemplates future employment with a city government to advise it on contamination issues of former military installations.

Lobbying

Nicole G. Paquette
Animal Protection Institute
Dated: December 6, 2004
File Number I-04-211

A lobbyist employer is given general advice regarding lobbyist employment contracts and the prohibition against contingency fee arrangements.